

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding and of Tentative Agreement is entered into this 7th day of March, 1973, by and between the STATE OF COLORADO and the STATE OF UTAH, acting by and through their officers thereunto duly authorized, and the following recitals are made to show the inducements for this understanding and agreement.

1. The State of Colorado and the State of Utah, desiring to remove all causes of controversy among states, between citizens of one of these states and citizens of the other state with respect to the use of water of Pot Creek and being moved by consideration of interstate comity and for the purposes of effecting an equitable apportionment of such waters of Pot Creek, have resolved to conclude this memorandum of understanding.

2. The above mentioned Pot Creek rises in the high Uintah Mountains in the eastern portions of Daggett and Uintah Counties in Utah and flows in a generally easterly direction and into Colorado before it flows into the Green River. That there are diversions and use of water from Pot Creek in both Utah and Colorado.

3. The lands in Colorado upon which water from Pot Creek is used are remote from other areas in Colorado and are inaccessible directly from Colorado and can be reached only by travel into Utah and thence to the lands in question and a map of the area is hereto attached for such purposes as are required by this Memorandum.

4. It is not practical or feasible to appoint a water commissioner to distribute solely the water diverted from Pot Creek in Colorado; that this impracticality and

infeasibility is not only a financial one but a physical one, bearing in mind that distribution of water is always impracticable unless all of the water in the source to be administered is subject to that distribution under one administration. The State of Colorado recognizes a duty to distribute water for these users but also recognizes that fulfillment of this duty in any practical way is most difficult and expensive.

5. The States of Colorado and Utah both recognize the need for the adoption of an interstate priority schedule in final form; but both states also recognize the necessity that any such priority schedule should be put to the test of actual use by the citizens and water users of the States involved before its adoption in final form.

From the foregoing recitals, the parties hereto enter into the following understandings and tentatively agree as follows:

1. That the attached priority schedule shall be and is hereby accepted by the contracting parties and shall be placed in operation for the purpose of administering and distributing the waters of Pot Creek during the 1973 and succeeding irrigation seasons.

It is understood that water inadvertently captured in upstream storage projects for any reason shall be released without loss and upon request for the use and benefit of the owners thereof who would have received said water except for the inadvertent storage.

2. That the State Engineers of Colorado and Utah, after such consultation with the water users of their respective state as they shall deem necessary and proper and in conformity with their respective state laws, shall agree upon joint administration and distribution

of the waters of Pot Creek under the doctrine of prior appropriation, and shall agree upon the appointment of a water commissioner who shall be selected as follows:

The State Engineer of Utah shall nominate a person competent to perform the duties of joint water commissioner.

If the State Engineer and Governor of Colorado, upon being advised of the name and qualifications of the nominee, concur, then such person shall be appointed as a water commissioner of the appropriate District in Utah by the State Engineer of Utah, and a water commissioner of the appropriate Water District in Colorado by the Governor of Colorado. If they fail to concur, the State Engineer and Governor of Colorado shall nominate such a person in the same manner for the consideration of Utah, and each shall take such turns in nomination until both states concur as aforesaid. Such commissioner shall have authority to administer and distribute the waters of Pot Creek in accordance with said priority schedule and under the supervision of the State Engineers, in the state in which he shall take any action, and shall possess such authority as water commissioners possess within the boundaries of the state wherein any action is taken by him. Each of the parties hereto reserves the right to cancel this agreement at any time on notice to the other, and to relieve the said water commissioner of any authority he has within the state serving notice of cancellation.

The compensation of such water commissioner and reimbursement for actual and necessary expenses shall be paid by each state under the fiscal procedures therein established. Such compensation and reimbursement for expenses shall be fixed by agreement between the State Engineers of the respective states, and shall be paid by each as follows:

State of Colorado 20%

State of Utah 80%

3. That said State Engineers shall agree upon and shall arrange for the construction, maintenance and operation of such measuring devices and stream gauging stations as shall be necessary and proper for the administration and distribution of water under said attached priority schedule.

4. That this agreement and understanding should remain tentative and should be the subject of an annual review between the parties both as to said priority schedule and as to the final result to be attained.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

STATE OF COLORADO

STATE OF UTAH

By _____

By _____

By _____
Director of Colorado Water
Conservation Board

By _____
Director of Utah Water
and Power Board

APPROVED:

APPROVED:

Governor

Governor